FILED

No. 96-2008 JUN 19 1997

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

Peter Lau and John Kuo Wei Tchen, *Appellants*,

—vs.—

ANGEL DIAZ, *et al.*, *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether the district court erred in granting summary judgment, finding New York's 12th Congressional District unconstitutional, when there was a material, disputed issue of fact involving the state legislature's subjective intent and primary motive in adopting the redistricting plan?

2. Even if the finding of a prima facie violation of the equal protection clause was correct, whether the district court erred in failing to find that the state had strong evidence for creating the 12th Congressional District in order to comply with the Voting Rights Act?

LIST OF PARTIES

The appellants are defendant-intervenors Peter Lau and John Kuo Wei Tchen below.

The appellees are plaintiffs Angel Diaz, Denise L. Motley and Reynaldo Coholo below.

The defendants below are Sheldon Silver, in his official capacity as Speaker of the House for the Assembly of the State of New York; Joseph L. Bruno, in his official capacity as President Pro Tem and Majority Leader of the Senate of the State of New York; George E. Pataki, in his official capacity as Governor of the State of New York; The Board of Elections of the State of New York; Owen T. Smith, Evelyn J. Aquila, and Helena M. Donohue, in their official capacities as Commissioners of the Board of Elections of the State of New York; and John Does 1 through 50, the names of such defendants being fictitious and unknown to plaintiffs, and referring to those persons who are responsible in their official capacities for the enforcement of the legislation that created New York's federal congressional districts.

Other defendant-intervenors below are Congresswoman Nydia Velazquez; Congressman Major R. Owens; Marshall Dubin; Asquith Reid; Evy Papillon-Juste; William Abrams; Annella C. Johnson; Luis Garden Acosta; Margarita Lopez; and Congresswoman Carolyn B. Maloney.

The plaintiff-intervenor is Delco L. Cornett below.

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

SHELDON SILVER, et al.,

Appellants,

vs.

ANGEL DIAZ, et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

Appellants Peter Lau and John Kuo Wei Tchen, defendant-intervenors below, appeal from the final judgment entered by the United States District Court for the Eastern District of New York, granting plaintiffs' summary judgment and declaring New York's 12th Congressional District unconstitutional.

OPINION BELOW

The Memorandum and Order of February 26, 1997, issued by the three-judge court in Diaz, et al. vs. Silver, et al., 92-CV-2591 (JMM, SJ, DGT) and filed in the United States District Court on February 27, 1997, and the judgment entered on February 28, 1997, have not been reported. They are contained in the Appendix of Appellant Sheldon Silver (hereinafter "Silver App.") at A-1 to A-80.

JURISDICTION

The final judgment appealed from herein was entered on February 28, 1997. Silver App. at A-78 to A-80. A notice of appeal to this Court was timely filed on April 23, 1997 by defendant-intervenors Peter Lau and John Kuo Wei Tchen. Said notice is appended hereto as Appendix A-1 through A-3. The jurisdiction of this Court to review the three-judge court judgment is invoked under 28 U.S.C. Section 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "[N]o State shall ... deny to any person within its jurisdiction the equal protection of the laws." The relevant federal statutory provisions are Sections 2 and 5 of the Voting Rights Act of 1965 as amended, 42 U.S.C. Sections 1973, 1973c, the pertinent parts of which are reproduced in Silver App. A-83 through A-85. The state statutes

creating the Congressional Districting Plan at issue are Chapters 137 and 138 of the New York State Laws of 1992.

STATEMENT OF THE CASE

Appellants Lau and Tchen adopt the Statement of the Case of the appellant defendant Sheldon Silver contained in his Jurisdictional Statement, hereinafter "Silver Jur." at 2-5.

THE QUESTIONS ARE SUBSTANTIAL

1. **THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT, FINDING NEW YORK'S 12TH CONGRESSIONAL DISTRICT UNCONSTITUTIONAL, WHEN THERE WAS A MATERIAL, DISPUTED ISSUE INVOLVING THE STATE LEGISLATURE'S SUBJECTIVE INTENT AND PRIMARY MOTIVE IN ADOPTING THE REDISTRICTING PLAN.**

The appellants Lau and Tchen adopt the arguments contained in Silver Jur. at 6-25 and in the Jurisdictional Statement of appellants Acosta and Lopez, hereinafter "Lopez Jur." at 11-17.

2. **EVEN IF THE FINDING OF A PRIMA FACIE VIOLATION OF THE EQUAL PROTECTION CLAUSE WAS CORRECT, THE DISTRICT COURT ERRED IN FAILING TO FIND THAT THE STATE HAD STRONG EVIDENCE FOR CREATING THE 12TH CONGRESSIONAL DISTRICT TO COMPLY WITH THE VOTING RIGHTS ACT.**

The appellants Lau and Tchen adopt the arguments contained in Lopez. Jur. at 28-29.

CONCLUSION

For the foregoing reasons, Appellants Lau and Tchen respectfully submit that the questions they present are substantial and request that this court docket this appeal for full briefing and argument. In the alternative, this court should accept jurisdiction of this appeal, reverse the final judgment of the district court which declared, inter alia, New York's 12th Congressional District unconstitutional, and remand to the district court for a full trial on the legislature's motivation in enacting the 12th Congressional District.

Respectfully submitted,

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June 19, 1997

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

SHELDON SILVER, et al.,

Appellants,

vs.

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Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX TO JURISDICTIONAL STATEMENT

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANGEL DIAZ, et al.,	
Plaintiffs,	Index No. 95-CV-2591 (DGT, JMM, SJ)
vs.	
SHELDON SILVER, et al.,	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
Defendants.	

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PLEASE TAKE NOTICE that Defendant-Intervenors Peter Lau and John Kuo Wei Tchen hereby appeal to the Supreme Court of the United States from the final judgment of the three-judge district court entered on February 28, 1997 granting, upon plaintiffs' summary judgment motion, declaratory and injunctive relief.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

Dated: April 23, 1997

By: /s/ Elizabeth R. OuYang

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